IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

W.A.No.1524 of 2006(C)

AGAINST THE JUDGEMENT IN O.P.NO.25826/1999 DATED 20/10/2005
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APPELLANT:-

M.P.SAHITHA, D/O.MOHAMMED,
DARUSSALAM, T.C.ROAD, KUTHUPARAMBA, KANNUR.

BY ADV. SRI.P.K.ASHOKAN

RESPONDENTS:-
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1. SECRETARY TO GOVERNMENT,
   DEPARTMENT OF LOCAL ADMINISTRATION (M),
   THIRUVANANTHAPURAM.

2. DIRECTOR OF MUNICIPAL ADMINISTRATION,
   THIRUVANANTHAPURAM.

3. KUTHUPARAMBU MUNICIPALITY,
   REPRESENTED BY ITS SECRETARY.

4. THE CHAIRMAN, KUTHUPARAMBU MUNICIPALITY,
   KUTHUPARAMBU.

5. THE SECRETARY,
   KUTHUPARAMBU MUNICIPALITY,
   KUTHUPARAMBU.

R1 & R2 BY GOVERNMENT PLEADER SRI.T.B.HOOD.

R3 TO R5 BY ADV.SRI.P.V.SURENDRANATH.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K.Bali,C.J. &
S.Siri Jagan,J.

W.A.No.1524 of 2006

Dated, this the 23rd day of November, 2006

JUDGMENT

V.K.Bali,C.J. (Oral)

M.P.Sahitha, the petitioner herein, filed a petition under Article 226 with a prayer to declare that the restriction that there shall not be any construction within 150 metres of the Kuthuparambu Municipal trenching ground is illegal and unauthorised. The petitioner also prayed that the orders Exhibits P1, P3 and P5 be quashed and respondents 4 and 5 be directed to issue building permit to the petitioner pursuant to her application dated 5.2.1998. The reliefs as indicated above are sought to be propped up on the pleadings that the petitioner is the owner and in possession of 70 cents of land in R.S.No.31/1A, 2A and 4B of Kuthuparambu Village. The land is situated in Ward No.3 of Kuthuparambu Municipality. The petitioner and her husband do not have a homestead to live and, therefore, they decided to construct a residential house in the land aforesaid. As a preliminary step for constructing a residential house, the

petitioner obtained permit No.240/89-90 dated 15.11.1989 from the 1st respondent-Municipality, when it was a Panchayat, and constructed a compound wall. The petitioner had also dug a well spending a considerable amount, mainly for the purpose of constructing a house. A motor was also installed in the well after getting electricity connection. The property was improved by planting coconut seedlings and other trees. Meanwhile, petitioner filed an application dated 5.2.1998 for a permit for construction of residential house in the property aforesaid, but the same was rejected by the Municipal Council by proceedings dated 5.3.1998 on the ground that the Municipal Council had adopted a resolution in 1996 that no permission would be granted for the construction of any building within 150 metres of the Municipal trenching ground. The property of the petitioner is situated within 150 metres away from the trenching ground. It is about 120 metres away from the said ground. Aggrieved, the petitioner filed an appeal before the Chairman, Kuthuparambu Municipality, the 4th respondent herein, but the same was rejected by the Council through order dated 5.1.1999. Still aggrieved, petitioner carried a revision dated 6.2.1999 before the Secretary to Government,

Department of Local Administration, the 1st respondent, which was also dismissed vide order Exhibit P5 dated 25.9.1999. These orders were challenged with a prayer to set aside the same by the issue of a writ in the nature of certiorari.

2. Pursuant to notice, respondent-Municipality filed a counter affidavit, wherein the basic facts as mentioned in the petition have been admitted. All that has been pleaded in opposing the cause of the petitioner is that the decision so as not to permit any activity within 150 metres from the Municipal trenching ground has been taken in view of sub-section (2) of Section 331 of the Kerala Municipality Act, 1994. The learned Single Judge before whom the matter came up for final disposal, dismissed the Original Petition by a short order, which is re-produced below:-

> "Petitioner approached this Court aggrieved by the refusal on the part of the Municipality to grant building permit. It is seen that the petitioner had pursued the matter before the Government. As per the impugned Ext.P5 order Government found that the Municipality has rightly refused to grant the permit because the land was required for expansion of the

trenching yard. Learned counsel for the Municipality submits that the Municipality had passed a resolution as early as in 1991 not to issue any building permit within 150 metres of the trenching yard. In case there is a change in the factual position, it will be open to the petitioner to approach the Municipality with a fresh application.

The Writ Petition is disposed of as above".

3. Learned counsel representing the appellant vehemently contends that even though it is stated in the impugned Exhibit P5 order of the Government that the land may be required for expansion of the trenching yard and, therefore, the petitioner cannot be permitted to build a house on the said land, but by adopting such a course an established owner of the property cannot be deprived permanently to enjoy the benefits thereof. In such a situation, the Government may acquire or may at least pay compensation of the land to the petitioner and by utilising the amount received as compensation, she can purchase an alternate land to construct a housestead so essential for life. Learned counsel for the respondent-Municipality states that it is the pleaded case of the respondent-Municipality that the land

would be acquired. This aspect of the matter has, however, been not mentioned by the learned Single Judge in the impugned order dated 20th October, 2005. Learned counsel for the respondent-Municipality states that he would seek instructions as to the time during which the land subject matter of dispute or other land may be acquired. When the matter came up for hearing on the last date, the Court had put a specific question to the learned counsel on this very issue and yet he stated that he has not received instructions. It is significant to mention that the Municipality has passed a resolution as early as in 1996 not to issue building permit within 150 metres of the trenching ground and it would be conscious even at that stage itself that by the decision aforesaid all owners of land within 150 metre radius would be deprived of its benefit. It is at that stage itself the Municipality ought to have taken a decision to acquire the land. Be that as it may, it is not in dispute that the land cannot be put to any building use as per the decision of the Municipal Council taken in 1996, and, therefore, it has to be acquired. That was why this Court directed to ascertain how much more time the Municipal Corporation would take to acquire the land. In the facts

and circumstances of the case, we are of the view that a time of six months from today at the most can be granted to the Municipal Corporation to start acquisition proceedings, which, so started shall be taken to its logical ends, as expeditiously as possible.

Disposed of accordingly.

V.K.Bali
Chief Justice

S.Siri Jagan
Judge

vku/-